UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,124	08/26/2003	Nobuyuki Saika	16869S-091000US	4758

			EXAMINER
20350	7590	08/22/2006	LE, MICHAEL

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/649,124	SAIKA ET AL.
	Examiner	Art Unit	
	Michael Le	2163	.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>03 May 2006</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *19-27* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *19-27* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on May 3, 2006 has been entered.

Summary and Status of Claims

1.   This Office Action is in response to Applicant's reply filed May 3, 2006.

2.   Claims 11-18 are cancelled.

3.   Claims 19-27 are pending.

4.   Claims 19, 20, 22-24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Burgess et al. (US Patent 5,796,633) of record, in view of Hasbun et al. (US

Patent 6,311,290) of record, further in view of Chong et al. (US Provisional Application

60/392,022) of record.

5.   Claims 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess

et al. (US Patent 5,796,633) of record, in view of Hasbun et al. (US Patent 6,311,290) of record,

further in view of Chong et al. (US Provisional Application 60/392,022) of record, in view of

Voigt et al. (US Patent 5,463,776) of record.

6.   The text of those sections of Title 35, U.S. Code not included in this action can be found

in a prior Office action.

Claim Rejections - 35 USC § 103

7.   **Claims 19, 20, 22-24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being**

unpatentable over Burgess et al. (US Patent 5,796,633) of record, hereinafter "Burgess", in

view of Hasbun et al. (US Patent 6,311,290) of record, hereinafter "Hasbun", further in

view of Chong et al. (US Provisional Application 60/392,022) of record, hereinafter

"Chong".

8.   In regards to **claim 19**, Burgess discloses a performance data management method for

managing performance data of a computer system which includes an information processing

device (Burgess: Fig. 2, element 26) and at least one storage system (Burgess: fig. 2, element 36)

which includes a controller and a storage area (Burgess: col. 4, lines 2-7)[1], the method executed

by the controller comprising:

       a.   detecting an amount of free space of the storage area (Burgess: col. 7, lines 11-

19);

       b.   acquiring performance data from the computer system (Burgess: col. 5, lines 18-

20; col. 8, lines 19-27)[2]; and

       c.   a step in which the controller stores the acquired performance data in the storage

area (Burgess: col. 8, lines 30-32).

9.   Burgess does not expressly disclose inputting, from the information processing device,

data acquisition levels each of which defines items of performance data according to each of the

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[1] Monitoring and tracking agent is interpreted as a controller for controlling the storage area because it stores the
data and performs other tasks in accordance with the storage, such as notification of other modules.

[2] The monitoring and tracking agent (controller) has a logging thread that obtains performance data.

data acquisition levels, calculating an amount of performance data according to each of the data

acquisition levels, selecting a data acquisition level according to the detected amount of free

space by comparing the calculated amount of performance data of each of the data acquisition

levels with the amount of free space when an amount of the acquired performance data is more

than the detected amount of free space and selecting, from the acquired performance data,

performance data of the data items corresponding to the selected data acquisition level.

10.   Hasbun discloses determining a method for storing data depending on the detected free

space and storing the data according to the determined method (Hasbun: col. 26, lines 12-24).

Hasbun also discloses determining the capacity of the data to be stored and a storing step that

includes, when the detected free space is greater than the capacity of the data to be stored, the

data is stored and when the detected free space is less than the capacity of the data to be stored,

as much of the data is stored to the space as possible until more space can be reclaimed, at which

time more of the data is stored as space becomes available (Hasbun: col. 26, lines 25-34; col. 27,

lines 3-20).

11.   Chong discloses obtaining and storing performance data acquisition information relating

to items for which performance data is acquired and relating to acquisition levels, wherein each

level provides different level of details for monitoring (Chong: para. 0013, 0014).

12.   Burgess, Hasbun and Chong are analogous art because they are all directed towards the

same field of endeavor of performance data management.

13.   At the time of the invention, it would have been obvious to one of ordinary skill in the art

to modify the method of Burgess by adding the steps of inputting, from the information

processing device, data acquisition levels each of which defines items of performance data

according to each of the data acquisition levels, calculating an amount of performance data

according to each of the data acquisition levels, selecting a data acquisition level according to the

detected amount of free space by comparing the calculated amount of performance data of each

of the data acquisition levels with the amount of free space when an amount of the acquired

performance data is more than the detected amount of free space and selecting, from the acquired

performance data, performance data of the data items corresponding to the selected data

acquisition level, as taught by Hasbun and Chong.

14. The motivation for doing so would have been because adding acquisition levels provides

a faster method for users to select what items from which to acquire performance data, since a

user does not have to select each individual item, but instead only a level. Furthermore, data

storage space has a finite capacity, therefore continuous storage into a finite space needs to be

managed as dependent on the amount of free space available in the storage device in order to

efficiently utilize the space available.

15. In regards to **claim 20**, Burgress discloses an interval for storing performance data to the

storage area (Burgess: col.13, lines 42-44).

16. Burgess does not expressly disclose if the amount of the acquired performance data is

more than the detected amount of free space, increasing an interval.

17. Hasbun discloses determining a method for storing data depending on the detected free

space and storing the data according to the determined method (Hasbun: col. 26, lines 12-24).

Hasbun also discloses determining the capacity of the data to be stored and a storing step that

includes, when the detected free space is greater than the capacity of the data to be stored, the

data is stored and when the detected free space is less than the capacity of the data to be stored,

as much of the data is stored to the space as possible until more space can be reclaimed, at which

time more of the data is stored as space becomes available (Hasbun: col. 26, lines 25-34; col. 27,

lines 3-20).

18.   At the time of the invention, it would have been obvious to one of ordinary skill in the art

to modify the combined method of Burgess, Hasbun and Chong by adding the step of

determining if the amount of the acquired performance data is more than the detected amount of

free space, taught by Hasbun, increasing the interval of Burgess.

19.   The motivation for doing so would have been because determining an interval for

acquiring performance data makes it easier for a user because a user does not have to manually

acquire the data each time (Chong: para. 0017, lines 1-7). The use of acquisition levels further

adds convenience for the user because the user can monitor preset groups of items without

having to select them individually (Chong: para. 0013, 0014). Determining a writing scheme is

advantageous because as data is stored, the amount of available memory decreases, which effects

the storage strategy. Detecting the amount of free space available after storing data and

determining a new storage strategy prevents situations where storage is unexpectedly full.

20.   In regards to **claim 22**, the limitation was addressed above in the rejection to claim 19 as

disclosed by Hasbun. Hasbun discloses determining the capacity of the data to be stored and a

storing step that includes, when the detected free space is less than the capacity of the data to be

stored, as much of the data is stored to the space as possible (extracting one or more portions of

the performance data and storing the generated performance summary data to the storage area)

until more space can be reclaimed, at which time more of the data is stored as space becomes

available (Hasbun: col. 26, lines 25-34; col. 27, lines 3-20).

21.   **Claims 23, 24 and 26** are substantially similar to claims 19, 20 and 22 respectively in the

form of a method and are rejected for the same rationale.

22.   **Claim 27** is substantially similar to claim 19 in the form of a computer program product

and is rejected for the same rationale.

23.   **Claims 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

Burgess et al. (US Patent 5,796,633) of record, hereinafter "Burgess", in view of Hasbun et

al. (US Patent 6,311,290) of record, hereinafter "Hasbun", further in view of Chong et al.

(US Provisional Application 60/392,022) of record, hereinafter "Chong", in view of Voigt et

al. (US Patent 5,463,776) of record, hereinafter "Voigt".

24.   In regards to **claim 21**, Hasbun discloses determining the capacity of the data to be stored

and a storing step that includes, when the detected free space is greater than the capacity of the

data to be stored, the data is stored and when the detected free space is less than the capacity of

the data to be stored, as much of the data is stored to the space as possible until more space can

be reclaimed, at which time more of the data is stored as space becomes available (Hasbun: col.

26, lines 25-34; col. 27, lines 3-20).

25.   Burgess, Hasbun and Chong do not expressly disclose deleting old data of the

performance data from the storage area to make new free space in the storage area and storing

new data of the performance data in the new free space.

26.   Voigt discloses a space manager for managing the storage area by determining if the amount of free space available below a predetermined lower threshold level, in which case the space manager will attempt to create free space until the amount of free space is equal to an upper threshold amount of free space (Voigt: col. 4, lines 40-55). Voigt further discloses that free space can be created by deleting old files (Voigt: col. 4, lines 34-37).

27.   Burgess, Hasbun, Chong and Voigt are analogous art because they are directed to the same field of endeavor of performance data management.

28.   The motivation for doing so would have been because data storage space has a finite capacity, therefore continuous storage into a finite space needs to be managed as dependent on the amount of free space available in the storage device in order to efficiently utilize the space available (Voigt: col. 1, lines 26-51).

29.   **Claim 25** is substantially similar to claim 21 in the form of a method and is rejected for the same rationale.

Response to Amendment

Rejection of Claims 11-18 under 35 U.S.C 112, Second Paragraph

30.   Claims 11-18 are cancelled rendering the rejection to them under 35 U.S.C. 112, Second Paragraph moot.

Rejection of Claims 16-18 under 35 U.S.C 101

31.   Claims 16-18 are cancelled rendering the rejection to them under 35 U.S.C. 101 moot.

Rejection of claims 11-18 under 35 U.S.C. 103(a)

32.   Claims 11-18 are cancelled rendering the rejection to them under 35 U.S.C. 103(a) moot.

Response to Arguments

Rejection of claims 19-27 under 35 U.S.C. 103(a)

33.   Claims 19-27 are rejected as set forth above. The prior art of record was relied upon to make the rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

34.   Additionally, Applicant concedes that the prior art discloses limitations of the invention (Page 7 of the Remarks). Applicant's arguments in regard to Burgess fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In regards to Hasbun, the limitation pointed out by Applicant is not recited in the language of the claims.

Conclusion

35.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Le whose telephone number is 571-272-7970. The examiner can normally be reached on Mon-Thurs : 9:30am-6pm, Fri: 8am-4:30pm.

36.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

37.   Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UYEN LE
PRIMARY EXAMINER

Michael Le
Art Unit 2163
August 20, 2006